

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM DURHAM, JR.,)
Plaintiff,)
v.) Civil Action No. 04-297 Erie
CITY AND COUNTY OF ERIE, et al.,)
Defendants.) **Electronically Filed**

PRETRIAL NARRATIVE STATEMENT OF DEFENDANT TACKETT

AND NOW, comes Defendant Tackett, by his attorneys, Thomas W. Corbett, Jr., Attorney General, Kemal Alexander Mericli, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and files the following pretrial statement:

I. NATURE OF THE CASE

Mr. Tackett did not do the DNA testing in Mr. Durham's prosecution for rape. At the trial of Mr. Durham Mr. Tackett made this point crystal clear. Tackett rather merely accurately quoted from and/or paraphrased the lab report of another State Police criminalist. Durham did not object nor cross-examine Tackett at the trial. Reversal of Durham's conviction by the Third Circuit had nothing to do with Tackett. It was because he was found to have been denied his right to counsel at trial. At this successful retrial, Durham's defense was consent making the lab report immaterial.

II. WITNESSES

In addition to himself, defendant may call:

Scott Ermlick
Pennsylvania State Police
Greensburg Regional Crime Laboratory
99 N. Westmoreland Avenue
Greensburg, PA 15601
(724) 832-5243

III. EXHIBITS

Defendant may introduce Ermlick's lab report, Exhibit B of plaintiff's complaint.

IV. DAMAGES

There are no damages sought.

V. UNUSUAL LEGAL ISSUES

To the best defendant has been able to determine, there are no unusual legal issues presented in this case.

VI. TRIAL TIME ESTIMATE

A motion for summary judgment is pending and this part of a trial would be less than a day.

VII. RESERVATIONS

1. Defendant reserves the right to file a Supplemental Pretrial Statement, as well as the right to present impeachment or rebuttal testimony as well as witnesses necessary to present foundation testimony covering the various exhibits that will be introduced into evidence by the defendant.

2. Defendant reserves the right to call, as liability witnesses, any and all such witnesses listed by any of the parties to this action in their Pretrial Statements, as well as the right to also reserve to call as witnesses any person or entity named in the pleadings, depositions, interrogatories and/or documents produced during discovery.

3. Defendant reserves the right to call, as damages witnesses, whether or not they are listed as liability witnesses in this pretrial statement, or in any other Pretrial Statement filed by any of the parties, any witnesses identified in the pleadings, depositions, interrogatories and/or other reports or documents produced during discovery.

4. Defendant reserves the right to introduce into evidence, in addition to the exhibits listed herein, any and all other documentary evidence which has been supplied to the plaintiff by means of Answers to Interrogatories, request for Production and/or depositions.

5. Defendant reserves the right to call any witnesses or present any evidence in rebuttal or as impeachment whether or not previously identified in this pretrial statement.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

By: s/Kemal Alexander Mericli
Kemal Alexander Mericli
Senior Deputy Attorney General
Attorney I.D. No. 27703

Susan J. Forney
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Date: July 11, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Pretrial Narrative Statement of Defendant Tackett was served upon the following via electronic/first-class mail on July 11, 2006.

Warren Durham, Jr.
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s/Kemal Alexander Mericli
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Date: July 11, 2006